UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Miami, FL

POINT BLANK BODY ARMOR, INC., and
NDL PRODUCTS, INC., A Single Employer
Employer

and

Case 25-RC-10133
(formerly Case 12-RC-8814)

UNITE, AFL-CIO, CLC[1]
Petitioner

SUPPLEMENTAL DECISION
AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 26, 31, and August 1, 2002, and resumed on September 16 and 17, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.[2]

I. PROCEDURAL HISTORY

A hearing in this case was originally conducted on multiple dates in July and August 2002. On September 3, 2002, the undersigned issued a Decision and Direction of Election. In that Decision, it was found that Point Blank Body Armor, Inc., and NDL Products, Inc., hereinafter referred to as the Employer, constitute a single employer. A group of production and

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[1] The name of the Petitioner reflects its legal name, which was recently changed.

[2] Upon the entire record in this proceeding, the undersigned finds:
a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

maintenance employees of both companies was found to constitute an appropriate unit for collective bargaining. On September 17, 2002, the Employer filed a timely request for review of the Decision with the Board. On September 27, 2002, based upon the filing of several unfair labor practice charges by Petitioner, the Regional Director for Region 12 ordered that further processing on the present petition be held in abeyance pending resolution of the outstanding unfair labor practice charges.

In February 2003, the Employer opened a new production facility in Deerfield Beach, Florida. On March 13, 2003, the Petitioner filed a motion with the Board requesting that the record in this proceeding be reopened to receive evidence concerning the propriety of adding the Deerfield Beach employees to the unit previously found appropriate. On June 19, 2003, the Board granted Petitioner's motion and remanded the proceedings to the Regional Director "for further appropriate action." The Board held in abeyance the Employer's request for review of the Decision and Direction of Election, pending the issuance of a supplemental decision. On July 11, 2003, the Regional Director for Region 12 issued an Order to reopen the record. On September 8, 2003, the Employer filed a motion with the Board to clarify or reconsider its previous order remanding the case to the Regional Director. On September 10, 2003, however, the Board's Associate Executive Secretary rejected the Employer's motion for reconsideration on the grounds that it was untimely, and therefore did not refer it to the Board for consideration. The record herein was subsequently reopened and additional hearing was held on September 16 and 17, 2003.[3] This decision supplements and does not supercede the Decision and Direction of Election issued by the undersigned on September 3, 2002.

II. ISSUES

After the undersigned issued his Decision and Direction of Election, and while the matter was pending review before the Board, the Employer opened a new production facility. The only issue pending in this proceeding is whether a unit comprised of employees of the two Oakland Park facilities and the new Deerfield Beach facility is an appropriate bargaining unit. Thus, the Petitioner seeks an employer-wide bargaining unit, while Employer contends that the Board's single-facility presumption should apply, and argues that the Petitioner has failed to carry its burden of showing that a multi-facility unit is appropriate.

III. DECISION

For the reasons discussed in detail below, including the Board's presumption that an employer-wide unit is appropriate, combined with factors which show that employees of all three

[3] The Employer argued at hearing and in brief that it was inappropriate for the Regional Director for Region 12 to reopen the hearing, given her previous decision to hold the processing of the representation petition in abeyance pending the resolution of outstanding unfair labor practice charges. The Employer urges that this ruling be reversed. One Regional Director, however, does not possess authority to rule upon a decision made by another Director. Therefore, the Employer's argument is one more properly directed to the Board.

facilities share a community of interest, it is concluded that an employer-wide unit comprised of employees who are employed at all three facilities constitutes an appropriate bargaining unit.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time hourly-paid production, maintenance, shipping, receiving, and warehouse employees[4] of Point Blank Body Armor, Inc., and NDL Products, Inc., a single employer, employed at their 4031 Northeast 12th Terrace and 1201 Northeast 38th Street, Oakland Park, Florida facilities, and at their 600 S.W. 12th Avenue, Deerfield Beach, Florida, facility, BUT EXCLUDING all office clerical employees, salaried employees, contractors, managers, guards and supervisors[5] as defined in the Act.[6]

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[4] In addition to the job classifications found appropriate in the first Decision and Direction of Election, the parties stipulated at the hearing herein that the following job classifications at the Deerfield Beach facility should be included in whatever unit is found appropriate: inspector/inspection, inventory control clerk, tacker, sewer, packer, assember/packer, shipping clerk, quality assurance, ballistic inspector, stamper/OTV stamper, cutter, spreader, helper/sorter, assembler, and quality assurance inspector.

[5] In addition to the individuals and job classifications excluded in the first Decision and Direction of Election, the parties stipulated at hearing that the following persons and their accompanying job classifications at the Deerfield Beach facility are supervisors within the meaning of Section 2(11) of the Act because they have the authority to direct the work of, assign work to, and discipline employees, and therefore should be excluded from the above unit:

Rickey Brown	-	Shipping Supervisor
John Jairo Castillo	-	Cutting Supervisor
Guy Remy	-	Ballistics Supervisor
Caesar Mendoza	-	Inspection Supervisor
Amalia Santiago	-	Interceptor Supervisor
Wayne Kolbeck	-	Director of Quality and Engineering
Julia Coleman	-	Shipping Team Leader
(vacant)	-	Inventory Control Supervisor
"	-	General Manager
"	-	Operations Director

[6] In addition to the job classifications excluded in the first Decision and Direction of Election, the parties stipulated at hearing the following job classifications at the Deerfield Beach facility should be excluded from any unit found appropriate: data clerk and GSA military coordinator. The parties could not reach agreement upon the eligibility of the Gerber mechanic position and agreed that the position could vote subject to challenge. Because there is no record evidence concerning the Gerber mechanic position, employees occupying that position will be permitted to vote subject to challenge and their voting eligibility will be determined, if necessary, in post-election proceedings.

The unit found appropriate herein consists of approximately 478 employees for whom no history of collective bargaining exists.

IV. STATEMENT OF FACTS

As reflected in the previous Decision and Direction of Election, the Employer operates a production facility with a nearby warehouse in Oakland Park, Florida. The Employer is engaged in the production and sale of body armor to governmental entities (including the U.S. Department of Defense), state and local police departments, and correctional facilities. The Employer opened a new facility in Deerfield Beach for the production of its military related items, including the Interceptor vest, which were previously produced at Oakland Park. In early February 2003 the Deerfield Beach facility became operational and the bulk of production work for the Interceptor was moved to Deerfield Beach. That facility is approximately 12 miles from the Oakland Park facilities. The parties stipulated at the hearing that the Oakland Park and Deerfield Beach facilities are the only facilities owned and operated by Employer.

To initially staff the Deerfield Beach facility, the Employer voluntarily transferred unit members from the Oakland Park facility. Effective February 10, 2003, approximately 101 employees and nine supervisors were transferred to the Deerfield Beach to begin production. Transferred employees retained their seniority dates accrued at Oakland Park for purposes of benefits and vacation. Additional employees were also hired at the Deerfield Beach facility after February 10, although it appears that no additional hiring has taken place since approximately mid-May 2003. A General Manager oversees the Deerfield Beach facility and reports to the Employer's Chief Operations Officer whose authority extends over all three facilities. The Chief Operations Officer's office is located in the administrative office area of the 12th Terrace, Oakland Park facility. The Deerfield Beach Operations Director is responsible for the day-to-day operations of that facility.[7] Supervisors employed at Deerfield Beach do not have authority over employees at Oakland Park, and vice versa. At the time of the hearing, there were approximately 136 employees within the above-described bargaining unit who were employed at the Deerfield Beach facility. The Deerfield Beach facility regularly operates from 7:30 a.m. to 4:00 p.m.

The production process at the Deerfield Beach facility is very similar to the one utilized at Oakland Park. Fabric for the body armor, which is stored on site at Deerfield Beach, is taken to the production floor and cut to size. The cut fabric is then moved to an assembly area where the ballistic material is sewn into fabric to make the completed body armor. The final product is packaged into bags and boxes and moved to the loading docks for shipment to customers. Quality control and inspectors are apparently involved throughout the production process. The ballistic material for a version of the Interceptor vest called the "Alpha model," is cut, assembled

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[7] Both the General Manager and Operations Director positions at Deerfield Beach were vacant at the time of the hearing.

and sewn at the 12th Terrace facility in Oakland Park before being shipped to Deerfield Beach where it is assembled into a completed product.

The Employer maintains a single Human Resource Department which is housed in the administrative office area of the 12th Terrace facility in Oakland Park. This Human Resource Department handles personnel matters for employees of all three facilities. It appears from the record that a representative from Human Resources visits the Deerfield Beach facility occasionally, perhaps once every two weeks, to meet with employees. The Employer's central payroll office is also located in its administrative office at Oakland Park, and it processes payroll for persons employed at all three facilities. Employees at Deerfield Beach who have questions about their payroll can speak to their supervisors or call the administrative office at Oakland Park. The parties stipulated at hearing that the "DHB Employee Handbook" establishes the personnel policies and fringe benefits which govern employees at all locations. The parties also agreed that the wages at Deerfield Beach are the same as wages received by classifications at the Oakland Park facilities. The parties further stipulated that the job skills of the employees at Deerfield Beach are the same as those utilized by employees at the Oakland Park facilities. A centralized Finance Department also exists in the administrative office area at Oakland Park, and it handles such matters as purchases made by the three facilities.

Management at Deerfield Beach administers its own job applicant tests and makes its own hiring decisions, although one employee testified that he completed an employment application at Oakland Park and was sent to the Deerfield Beach to be tested. Employment applications for Oakland Park and Deerfield Beach facilities are the same. The managers at Deerfield Beach also have authority to make disciplinary decisions without prior consultation with Oakland Park staff. Employees who work at Oakland Park do not have access to the Deerfield Beach facility, and each facility has its own employee identification badge system. Since the opening of the Deerfield Beach facility when approximately 101 employees transferred there from Oakland Park, two employees have permanently returned to the Oakland Park facilities. Since its initial staffing there have been no further permanent transfers from Oakland Park. However, two Oakland Park employees performed work at Deerfield Beach on a temporary basis on several occasions during the month after the Deerfield Beach facility opened. No Deerfield Beach employees have been temporarily assigned to work at the Oakland Park facility.

V. ANALYSIS

A. The Appropriate Unit

As noted above, the sole issue is whether a combined unit comprised of employees of the two Oakland Park and one Deerfield Beach facilities is appropriate. The Board has long held that an employer-wide bargaining unit is presumptively appropriate. *See, e.g.*, Acme Markets, 328 NLRB 1208, 1209 n.9 (1999) (citing Greenhorne & O'Mara, Inc., 326 NLRB 514, 516 (1998); Livingstone College, 290 NLRB 304 (1988); Montgomery County Opportunity Board, Inc., 249 NLRB 880, 881 (1980); Jackson's Liquors, 208 NLRB 807, 808 (1974); Western Electric Co., 98 NLRB 1018 (1952); and Section 9(b) of the National Labor Relations Act). In

the present case, the Petitioner initially sought a unit comprised of employees employed at the Employer's two Oakland Park facilities. Following the creation of the Deerfield Beach facility and the transfer of some of the Oakland Park work and employees to Deerfield Beach, the Petitioner moved that the record be reopened to receive evidence concerning the propriety of including employees of Deerfield Beach into the bargaining unit previously found appropriate by the undersigned. The parties stipulated at hearing that Oakland Park and Deerfield Beach are the Employer's only production facilities. Therefore, the Petitioner now seeks an employer-wide unit.

Where a petitioner seeks an election only within a single facility and an employer urges that the unit be broadened to include one or more additional facilities, the Board has held that a single-facility unit is presumptively appropriate, and the burden rests upon the employer to show that factors exist which overcome this presumption. Here, however, a multi-facility unit was found appropriate in the initial Decision and Direction of Election; the Petition now seeks to expand the unit to an employer-wide one; and therefore, the single-facility presumption is not applicable.

It appears clear that the employees of Oakland Park and Deerfield Beach share a community of interest. Most of the Deerfield staff formerly worked at Oakland Park and presumably retain an interest in the well-being of their former co-workers. Employee transfers between the Oakland Park and Deerfield facilities reinforce this community of interest. Some of the Deerfield staff are currently supervised by former Oakland Park supervisors. All employees of the Employer are governed by the same employee handbook, work rules, and employment policies. All hourly-paid employees work substantially the same hours, receiving substantially the same wages and fringe benefits. Labor relations and employment policies are administered from a centralized Human Resource Department located in Oakland Park. Other administrative functions such as payroll are also administered from the Employer's centralized administrative office located at the 12th Terrace facility in Oakland Park. Indirect supervision of the three facilities is the same. The highest ranking member of management at each facility reports to a common superior, the Chief Operations Officer. Employees at all three facilities perform substantially the same job duties, utilizing similar job skills. In fact, there is some testimony indicating that at least some employees at Deerfield Beach retain the same departmental classification number as their counterparts in Oakland Park. There is also some product interchange between the facilities, with Oakland Park employees performing manufacturing functions on the Alpha Interceptor body armor, with final assembly completed at Deerfield Beach.

Factors mitigating against the employer-wide unit are the presence of different immediate supervision at the three facilities, the distance between their locales, and an absence of recent employee interchange between the facilities. Although the day-to-day supervision at the facilities differs, indirect supervision, as previously discussed, remains the same. The distance between locales is not extensive: only about 12 miles. And while there is no evidence that temporary transfers between the facilities has occurred recently, there is also no evidence that such transfers will not occur. The Employer's past practice evidenced at the first hearing suggests that if additional employees are needed at Deerfield Beach due to an exigent circumstance, employees will be transferred temporarily to that facility. On balance, the above

factors are insufficient to rebut the presumptive appropriateness of an employer-wide unit in view of the numerous other factors which support a community of interest among the employees of all three facilities.

It is therefore concluded that an employer-wide bargaining comprised of the employees employed at the Employer's facilities located on 12th Terrace and 38th Street in Oakland Park, Florida and at the facility located on 12th Avenue in Deerfield Beach, Florida, comprise an appropriate bargaining unit.

B. The Gerber Mechanic Position

As mentioned above, the parties were unable to agree upon the unit placement of the Gerber Mechanic position. Since the record is insufficient to make reasoned findings of fact and conclusions concerning the proper placement of this position, persons occupying this position shall be permitted to vote subject to challenge, and their eligibility to vote shall be determined, if necessary, in post-election proceedings.

VI. SHOWING OF INTEREST

Since this Supplemental Decision enlarges the unit found appropriate in the original Decision and Direction of Election, in the event the Petitioner's showing of interest is not sufficient in this employer-wide unit, the Petitioner shall have fourteen (14) days from the date of this Supplemental Decision in which to submit to Region 12 a showing of interest in the three-facility unit found appropriate herein. *See* Brown Transport Corp. 296 NLRB 1213 (1989); Casale Industries, Inc., 311 NLRB 951 (1993).

VII. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by Region 12, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Supplemental Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITE, AFL-CIO, CLC.

VIII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *See* Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

IX. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director of Region 12 within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director for Region 12 shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 12's office located at South Trust Building, Suite 530, 201 East Kennedy Boulevard, Tampa, FL 33602, on or before **October 14, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

X. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 20, 2003.

SIGNED at Indianapolis, Indiana, this 6th day of October, 2003.

/s/

Roberto G. Chavarry
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